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FEDERAL COMMUNICATIONS COMMISSION
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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's	)	PR Docket No. 93-144
Rules to Facilitate Future Development of	)	RM-8117, RM-8030,
SMR Systems in the 800 MHz Frequency Band	)	RM-8029
and		
Implementation of Section 309(j) of the	)	
Communications Act -- Competitive Bidding	)	PP Docket No. 93-253
800 MHz SMR	)	

To: The Commission

COMMENTS TO FURTHER NOTICE OF PROPOSED RULE MAKING

LAGORIO COMMUNICATIONS

Robert H. Schwaninger, Jr.
Brown and Schwaninger
Suite 650
1835 K Street, N.W.
Washington, D.C. 20006
202/223-8837

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SUMMARY

Lagorio has long been in the business of providing analog SMR services in the Northern California area. Its facilities serve the needs of thousands of end users who rely on the efficient and cost-effect dispatch services provided by Lagorio at competitive rates. Lagorio's efforts have included vast investment in personnel and equipment to continue the growth necessary to serve an ever-increasing demand for services. Lagorio is the licensee of dozens of 800 MHz band channels which are employed in trunked and conventional manners to serve the customized needs of its subscribers. In accord with the licensing regime created by the Commission, Lagorio's market does not reflect boundaries created by Basic Trading Areas or Metropolitan Trading Areas. Instead, Lagorio, like all other SMR operators, has grown along a path which follows opportunity, market, channel availability and site availability. As is apparent by the foregoing, Lagorio's interest in this matter is intense, as the Commission is embarking on a path which may result in substantial changes and perhaps, attendant injury to Lagorio's business, both now and in the immediate future.

Unlike cellular and now, PCS, the SMR marketplace is well along the road to full maturation. Substantial investments have been made in licenses, equipment, construction, and market positioning. Accordingly, the proposals offered by the FCC must be considered in full view of the status of the market as it exists, and not based on irrelevant regulatory models which might be devised when a service is in its infancy. There must, therefore, exist compelling reasons for unraveling the tapestry of law and investment which presently exists; to justify reweaving the tapestry to create another image.

Lagorio submits that the burden for taking such action must rest squarely on those entities who might support such drastic action, to fully justify the inherent harm and delay to those entities, like Lagorio, who have acted in full reliance on the Commission's past policies. Lagorio submits that no such argument can be made which would justify the actions proposed regarding forced frequency reallocation; market-based licensing; use of auctions to determine licensees; and reduced flexibility in the use of frequencies in the 850 MHz band.

This idea lofted by Nextel Communications, Inc. in its earlier comments to this Docket was summarily rejected by the analog SMR industry which still exists with great vitality, serving hundreds of thousands of subscribers. Nextel failed to consider the cost of performing such a reallocation. The costs which would be borne by the Commission and licensees in making and processing modifications of existing licenses is extreme. The cost to incumbent licensees and the Commission is far too high, particularly in view of the fact that the number of true benefactors can be counted on a single hand. These costs must be considered economic waste.

One false premise which is required in support of the proposal is that the MTA-licensed ESMR operator will exchange the "old SMR frequencies" held by local, analog SMR operators, for new "fully comparable alternative frequencies." There has been and can be no demonstration that 800 MHz band channels will be available at a quantity and at locations which will satisfy the proposed exchange. Since it apparent that adequate 800 MHz band channels do not exist and

the Commission's proposals do not suggest a further allocation for this purpose, it follows that the alternative frequencies to which the proposal refers are located in another frequency band. If this is, in fact, what is intended, then the quality of the alternative channels cannot be found to be "fully comparable".

The benefits which allegedly arise out of forced frequency migration are to be enjoyed by a small number of operators whose contribution to the marketplace thus far is in severe doubt. The Commission's decision in this matter must be directed at the benefits and losses to be enjoyed or suffered by the public and not the effect on a single entity, Nextel Communications, Inc.

The imposition of MTA boundaries cannot be seen as beneficial to operators. Operators' systems have grown organically in accord with demand and ability to serve that demand. The effect of MTA boundaries would be to create an artificial environment for the offering of services which will not reflect existing operators' ability to deliver that service from logical distribution points.

The idea of forced frequency migration is anathema to those who will be made to bear the cost without concurrent benefit, including the millions of members of the public who will be made to suffer under such a regulatory scheme. The Commission would be selling licenses which are used presently to provide service to the public. Given the fact that fully comparable spectrum is not available and the proposals do not suggest that an inventory of spectrum exists which meets this single criterion, the proposal is nothing short of a death knell for existing operators.

Lagorio opposes the employment of the Commission's auction authority in the application process applied to SMR service; and opposes with the greatest of vigor the holding of auctions to determine authority to provide ESMR service throughout an MTA.

At the core of the instant matter is the question of whether the public interest is better served by traditional SMR operators and ESMR operators as each is presently regulated. It is Lagorio's belief that integrated, digital SMR service, employing frequency reuse has promise. It is further its belief that such service will not serve the public if it violates basic economic principles regarding demand, price, and distribution.

Regardless of whether the Commission adopts its proposal for MTA licensing — but most especially if it does — the Commission needs to provide adequate protection for co-channel stations in northern California. The area within which an existing, traditional SMR station's customers are currently receiving service should be protected fully if the Commission adopts its wide-area licensing proposal.

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030, RM-8029
and		
Implementation of Section 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

COMMENTS TO FURTHER NOTICE OF PROPOSED RULE MAKING

Lagorio Communications ("Lagorio") by and through counsel hereby respectfully offers its comments to the above captioned matter. In support of its position and in an attempt to assist the Commission in engaging in reasoned decisionmaking, calculated to protect the public interest in the delivery of valuable telecommunications services to the public, the following is shown:[1]

Lagorio Is An Interested Party

Lagorio has long been in the business of providing analog SMR services in the Northern California area. Its facilities serve the needs of thousands of end users who rely on the efficient

[1] Lagorio requests that the Commission rely on the comments of individual operators, moreover than those which are likely to be filed by trade associations. Given the ongoing discussions and contentions monitored by Lagorio which appear to be plaguing the trade associations, it is apparent that none of the trade associations are positioned to claim representation of any consensus opinion.

and cost-effect dispatch services provided by Lagorio at competitive rates. The effect of Lagorio's efforts has been the delivery of dispatch services to both small and large companies, which operations are improved by their increased ability to coordinate the movement of persons and property over a wide geographic area, including the ability to provide necessary emergency communications during those times when injury to persons or property may indeed be of paramount performance.

Lagorio's efforts have included vast investment in personnel and equipment to continue the growth necessary to serve an ever-increasing demand for services. Operating from numerous locations, Lagorio has invested hundreds of thousands of dollars in equipment, and much more in the operational costs necessary to continue to deliver reliably its services to a grateful public.

Lagorio is the licensee of dozens of 800 MHz band channels which are employed in trunked and conventional manners to serve the customized needs of its subscribers. Its licenses include authority to operate both on the 860-861 MHz band which is proposed to be limited for ESMR use; and the portion of the 850 MHz band which is proposed to be used for only local operations of analog systems. Accordingly, Lagorio's interest in this matter includes the entire frequency band under consideration.

In accord with the licensing regime created by the Commission, Lagorio's market does not reflect boundaries created by Basic Trading Areas or Metropolitan Trading Areas. Instead, Lagorio, like all other SMR operators, has grown along a path which follows opportunity,

market, channel availability and site availability. This free market approach in accord with existing regulation has provided Lagorio the flexibility to find and serve its market effectively and efficiently.

As is apparent by the foregoing, Lagorio's interest in this matter is intense, as the Commission is embarking on a path which may result in substantial changes and perhaps, attendant injury to Lagorio's business, both now and in the immediate future. It is, therefore, incumbent upon Lagorio to participate and be heard in this rule making, the outcome of which is of vital importance to Lagorio and similarly situated entities.

Reweaving The Tapestry

The Commission's Rules, spectrum allocations, policies and precedents in the area of SMR regulation is a tapestry which has been woven over a prolonged period, extending for more than twenty years. The SMR market has produced hundreds of small businesses which have sought to serve the public demand for dispatch services, employing the efficiencies of trunked technology. The successes of the industry are apparent and many, as its maturation has progressed to the point where hundreds of thousands of subscribers exist today, fully dependent on SMR services for their operations.

Unlike cellular and now, PCS, the SMR marketplace is well along the road to full maturation. Substantial investments have been made in licenses, equipment, construction, and market positioning. Accordingly, the proposals offered by the FCC must be considered in full

view of the status of the market as it exists, and not based on irrelevant regulatory models which might be devised when a service is in its infancy. There must, therefore, exist compelling reasons for unraveling the tapestry of law and investment which presently exists; to justify reweaving the tapestry to create another image.

Lagorio submits that the burden for taking such action must rest squarely on those entities who might support such drastic action, to fully justify the inherent harm and delay to those entities, like Lagorio, who have acted in full reliance on the Commission's past policies. Supporters of these radical changes must also show that any adverse impact to subscribers is justified by an outcome that produces a viable service, which entrance into the market will so benefit the public interest that the benefit of introduction far and away exceeds the cost of that introduction.

Lagorio submits that no such argument can be made which would justify the actions proposed regarding forced frequency reallocation; market-based licensing; use of auctions to determine licensees; and reduced flexibility in the use of frequencies in the 850 MHz band. Lagorio submits that these proposed actions are fully detrimental to incumbent SMR licensees, save a small handful. Lagorio also states that the cost of imposing such a regulatory scheme shall be borne by those which are least eligible to pay, for the sole benefit of those few which are best able to pay. Equity and the public interest demand that such proposals be rejected.

Forced Frequency Swapping

This idea lofted by Nextel Communications, Inc. in its earlier comments to this Docket was summarily rejected by the analog SMR industry which still exists with great vitality, serving hundreds of thousands of subscribers. Its rejection by potentially adversely affected operators is both understandable and justified. Nextel's premise that such forced relocation of incumbent licensees is tantamount to the relocation of microwave operators by PCS operators, is fatally flawed in all respects and does not reflect reality.

Costs:

Nextel failed to consider the cost of performing such a reallocation. Changing out the frequencies employed by hundreds of thousands of subscribers is a difficult and costly venture. Nextel claims that it will bear the cost in those markets where it might obtain a market-based ESMR grant of authority, but has failed to demonstrate with any assurance that it has or will possess the resources to perform this daunting task. The cost of performing this reallocation will include change out of end user mobile equipment; changes in combiners; changes in site lease agreements where in the frequency is a term contained therein; intermodulation studies; engineering studies; interference analysis; relocation of whole systems; personnel time; labor; changes in end user contracts; down-time for subscribers; delays arising out of conversions; costs associated with equipment availability; costs and inconvenience and loss of business to subscribers while mobile units are reprogrammed; and a myriad of other costs which Nextel's proposal failed to address in even a cursory manner.

In addition, the costs which would be borne by the Commission and licensees in making and processing modifications of existing licenses is extreme. And during these conversions, the opportunity for unintended incidents of interference and signal overlap would increase and create a dangerous environment for meaningful regulation. In sum, the cost to incumbent licensees and the Commission is far too high, particularly in view of the fact that the number of true benefactors can be counted on a single hand.

These costs must be considered economic waste, unless and until supporters of forced frequency migration can demonstrate with clarity the following: (1) that the public will receive in exchange a service that is so necessary and compelling that it requires this action; (2) that the operators who are forced to abandon their use of the frequencies can be fully compensated for such cost; and (3) that those supporters of this action can demonstrate with assurance that they are willing and able, by and through concrete financial commitments, to bear such costs in their entirety based on a realistic, not superficial appreciation of those costs. Lagorio submits that none of the supporters can come close to or meet this necessary burden.

The Substituted Frequencies:

One false premise which is required in support of the proposal is that the MTA-licensed ESMR operator will exchange the "old SMR frequencies" held by local, analog SMR operators, for new "fully comparable alternative frequencies." What is missing in support of this proposal is a clear identification of whether such frequency alternatives exist. Although there has been a presumption or miscalculation that what is meant by the description of the alternative spectrum

is other, available 800 MHz band channels, this presumption is not necessarily accurate and, in fact, may be wholly illusory.

There has been and can be no demonstration that 800 MHz band channels will be available at a quantity and at locations which will satisfy the proposed exchange. In Lagorio's market areas, such a promise would be impossible to fulfill. Accordingly, it is apparent that the allocated spectrum simply does not exist that would enable an ESMR operator to exchange one-for-one in the 800 MHz radio band.

Since it apparent that adequate 800 MHz band channels do not exist and the Commission's proposals do not suggest a further allocation for this purpose, it follows that the alternative frequencies to which the proposal refers are located in another frequency band. It may be that the supportive ESMR operators are intending to trade channels in the 450-460 MHz band for "old SMR channels".[2] If this is, in fact, what is intended, then the quality of the alternative channels cannot be found to be "fully comparable". Certainly, not under the present structure of the Commission's Rules, including without limitation the Commission's mandate on frequency sharing for operations below 470 MHz.[3]

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[2] In fact, such a plan appears to be at the unarticulated center of Nextel's proposal according to private conversations with one of its suppliers representatives.

[3] Lagorio recognizes the possible effects of the Commission's pending efforts regarding the "refarming" of spectrum in the 450-460 MHz frequency band and the promises of future, potential exclusivity on some of that spectrum. However, the nature of that matter is too speculative and the effects the amendments to the Communications Act which have occurred since refarming issues have been formally presented for comment are yet unknown; to allow any bright promises from that undecided matter to serve as any basis for adoption of

No logical argument exists or can be made to show that forcing 450 MHz band frequencies on an operator, so that the operator's system works on some 800 MHz band frequencies and some 450 MHz band frequencies is "fully comparable" to operations within a single frequency band and any attempt to make this argument should be summarily rejected by the Commission.

There can be no doubt, therefore, that there exists no opportunity, in law or logic, for reaching the objective within the frequency swapping proposals still circulating. Sufficient 800 MHz band spectrum simply does not exist and channels in other bands cannot be configured to result in an exchange of "fully comparable" spectrum.

Benefit:

As more fully discussed, *infra.*, the benefits which allegedly arise out of forced frequency migration are to be enjoyed by a small number of operators whose contribution to the marketplace thus far is in severe doubt. The level and reliability and the demand for the services to be offered by and through the operation of ESMR systems has never been shown, except in the hopeful annuals of financial portfolios designed to encourage stock transactions more than provision of service to the public.

The Commission's decision in this matter must be directed at the benefits and losses to be enjoyed or suffered by the public and not the effect on a single entity, Nextel Communications, Inc. What legally and fairly matters is whether the public will be served better

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this proposal.

by adoption of the proposals. Since ESMR operators offer no service that cannot be delivered as well or better by cellular systems or PCS systems or other existing systems and operations, there is little, if any, incentives to progressing with these radical proposals -- particularly to the disadvantage of the public which SMR operators presently serve.

For the reasons shown, the Commission should summarily reject the proposal to force any frequency exchange as wholly unwise, unworkable and inequitable.

MTA Licensing

As stated above, Lagorio, like all SMR operators, has developed over the years in a manner which reflects the market and its regulatory opportunities. Its substantial growth has not been restricted or dictated by Rand McNally's arbitrary configurations. Therefore, when it made the decision and the substantial investment to increase its market area in subsequent responses to demand, it was not obliged to reject opportunities due to arbitrary boundaries and borders that bore little application or relevance to Lagorio's business strategy.

Lagorio's present systems cross MTA borders. Lagorio has made application to the Commission to operate an ESMR system throughout its entire, existing service area. What then would be the effect of an imposition of MTA licensing for operation of an ESMR system? It appears that such an imposition would require Lagorio to (1) choose among MTAs for its future business or; (2) bid at auction for two MTAs, for which it would have to commit substantial

resources to acquire and build out or; (3) abandon its application or; (4) simply cease its natural growth. Lagorio challenges any regulatory action which might result in any of these adverse outcomes.

It would be another matter if Lagorio had developed its business from the outset to reflect a regulatory scheme that took official notice of MTA borders. But to suggest imposition of such regulation following decades of growth, effort, market development, and extreme investment, flies in the face of fundamental fairness at the least, and is certainly a recipe for extreme economic waste. What possible justification might there be?

Such justification cannot include a promise to serve better the public. Service to the public is not improved by imposition of market-based licensing on a mature service. To the contrary, the likelihood is that subscribers will be forced to pay greater costs as the separation of carriers occurs along MTA boundaries, resulting in previously unlevied roamer charges, arising out of intercarrier agreements between MTAs.

The imposition of MTA boundaries cannot be seen as beneficial to operators. Operators' systems have grown organically in accord with demand and ability to serve that demand. The effect of MTA boundaries would be to create an artificial environment for the offering of services which will not reflect existing operators' ability to deliver that service from logical distribution points.

And if one adds the cost of having to bid at auction for the right to provide ESMR service, which was previously earned by a demonstration of success through loading of existing facilities, the Commission gives a clear signal that receipts at auction are a better test of a company's desire to provide service to the public than an operator's past history. It should be otherwise. The ability to place dollars in the U.S. Treasury should not be deemed a better demonstration of an operator's fidelity to participate in the Commission's mandate, than an operator's long-demonstrated willingness to provide service.

One must then ask, upon what allegedly fertile ground does such a proposal lie? The first answer arises out of the nature of financial markets which prefer to invest in companies which can demonstrate a spectrum fiefdom. The ability to say, "we are the ESMR in Dallas" carries greater weight than attempting to explain to mutual fund managers the effect of frequency consolidation in an organic marketplace. It's simple, direct and compelling. What it does not allow for, however, is the Commission's mandated perspective. That is, whether the Commission's mandate includes a duty to raise capital in this manner for the benefit of a few publicly traded corporations. Lagorio asserts that the Commission will search the Communications Act in vain if it attempts to find any such direction from Congress.

The proposal may also look attractive from the Commission's position in that it appears to make regulation easier. There can be little doubt that the Commission's task appears easier in the regulation of frequency block use over a defined market area, rather than over a patchwork of frequency uses as characterizes the present market. However, these advantages

are illusory and, in fact, irrelevant. The amount of administrative resources necessary to put the "genie in the bottle" are predicted to be extreme. Trying to rein in frequency use within an MTA after it has been allowed to organically succeed, without regard to such limitations will be a huge, likely litigious, action. Accordingly, there can be no reasonable expectation that acceptance of market-based licensing will create anything other than enormous outlays of scarce Commission resources.

It is also necessary to ask whether administrative efficiency, even if wholly illusory as in this matter, can serve as a justification for radical changes in regulatory treatment? Although one can rarely make a logical, direct equation such that administrative efficiency equals public interest, unless such efficiency directly results in service to the public; in the instant matter such an equation is completely impossible. Even were the Commission to reap some small benefit from acceptance of this proposal, it cannot be found that the public would benefit from such efficiencies. In fact, the public would be directly and tangibly injured through the curtailing of existing SMR operators upon which the public depends for service. Therefore, there exists no logical basis for MTA-based licensing arising out of any claim or false promise of administrative efficiency.

Based on the foregoing, the Commission should reject those proposals that try so hard to mirror the Commission's actions in regulating cellular and PCS operations in accord with MTA boundaries. In neither instance did the Commission have to reinvent the market. In neither instance did the Commission have to injure critically a vital and successful portion of the

telecommunications marketplace. And in neither instance did the Commission have to demand that the public suffer as a direct consequence of its actions.

The Judicious Use Of Auctions

The Commission's use of its new auction authority has proven to be a boon for the U.S. Treasury. No one can question the successes visited upon the federal government by the auctioning of PCS and IVDS spectrum, even in view of the few that have reneged on their promises to pay. And although Lagorio accepts the Commission's use of auctions to determine new licensees for certain spectrum, any such method must be tempered by good common sense.

The proposals include the idea that ESMR authority would be determined at auction, resulting in grants of spectrum block reservations within MTAs for auction winners, so that those blocks could be employed to deliver ESMR services on contiguous spectrum. This theoretical model can only be deemed logical if, and only if, the Commission demands frequency migration from existing users of channels contained within those blocks who do not win at auction. Without this condition precedent, the holding of such auctions is wholly illusory. There is little, in the way of opportunity, to obtain through bidding.

As fully stated *supra.*, the idea of forced frequency migration is anathema to those who will be made to bear the cost without concurrent benefit, including the millions of members of the public who will be made to suffer under such a regulatory scheme. However, taken in another, logical context, it is apparent that what the Commission would auction is not channels

within its own inventory, but channels which are held and used by existing licensees. Stated another way, the Commission would be selling licenses which are used presently to provide service to the public. Were the winners able to compensate the existing licensees with "fully comparable" spectrum, this action would be merely injurious. But given the fact that fully comparable spectrum is not available and the proposals do not suggest that an inventory of spectrum exists which meets this single criterion, the proposal is nothing short of a death knell for existing operators.

Additionally, any such proposal is entirely premature. The Commission has before it tens of thousands of applications for additional SMR facilities throughout the United States; it has created an arbitrary backlog of additional applications by its use of an application freeze; and it has a dynamic licensing effort that continues due to its interpretation of the freeze which allows applications for ESMR facilities to continue to be accepted for filing. In sum, the Commission has not shown that it has gathered the information necessary to determine whether auctions are within the public interest, which is available within its own files. Any use of auctions must arise only following a market/application/license/wait list analysis to determine whether anything of value remains to be auctioned, either via a market-based approach or a facility-based approach. Absent this analysis, it cannot be found that a decision to now employ auctions arises out of reasoned decision making, based on facts known to the agency.

Based on the foregoing, Lagorio opposes the employment of the Commission's auction authority in the application process applied to SMR service; and opposes with the greatest of

vigor the holding of auctions to determine authority to provide ESMR service throughout an MTA. Such action is without logical or legal basis and must be rejected as contrary to the public interest. As Congress stated in its recent amendment to the Communications Act, while granting auction authority, the Commission's goal cannot be simply the raising of funds to fill the U.S. Treasury. The agency must also create rules and policies which promote the opportunity of small businesses. It is apparent that the proposal to auction SMR spectrum will have the opposite effect.

Give The Public What It Wants

At the core of the instant matter is the question of whether the public interest is better served by traditional SMR operators and ESMR operators as each is presently regulated. Focusing on this issue is quite illuminating. Lagorio is, by most standards, a traditional SMR operator, albeit a quite successful one. It is licensed to provide service from numerous traditional SMR facilities spread over a fairly large geographic area, to provide an integrated analog SMR service. Concurrently, Lagorio is an applicant for authority to offer ESMR services to the public.

As discussed above, Lagorio's application is threatened by the proposed rules, despite the fact that Lagorio has requested authority to offer ESMR service. Lagorio's application does not conform with MTA-based licensing and it is not accompanied with any auction authority. Instead, Lagorio's application reflects the Commission's previously articulated Rules and policies. It further reflects Lagorio's success which it has determined might be made greater

through receipt of ESMR authority, allowing it to provide digital operations on a time table that is in accord with Lagorio's business strategy. The Commission's proposals not only threaten Lagorio's application but challenge Lagorio's knowledge of its own business and market, seeking to impose a regulatory regimen on Lagorio which will penalize the Company for its success. Certainly, such a result cannot be found to be in Lagorio's interest or in the interest of similarly situated concerns.

It is Lagorio's belief that integrated, digital SMR service, employing frequency reuse has promise. It is further its belief that such service will not serve the public if it violates basic economic principles regarding demand, price, and distribution. In fact, the violation of such principles by other ESMR operators and the attendant becalmed ESMR service market has created the desperation exhibited by the supporters of the proposals. The public has voiced little demand and less acceptance of the existing ESMR systems and there can be no reasonable expectation that such performance will be improved.

Taken in greater specificity, the Commission and Wall Street have been led to believe, in varying degrees, that the public is clamoring for ESMR service and the services it might bring. This unsupported claim of pent-up demand is belied by the facts arising out of the handful of ESMR systems in operation which have not experienced acceptance or growth in their respective markets. Accordingly, the Commission must come to recognize that claims of overwhelming demand, i.e. need, are beyond optimism. Nor can it be shown that any demand which might exist would not be better served by PCS.

The Commission may also take official notice that the pricing of ESMR services far outstrip any pricing of traditional SMR services. Accordingly, any demand projected or predicted must necessarily be examined in accord with necessary pricing. Once accomplished, this analysis would demonstrate that ESMR services as are being presented today will evidence problems with market acceptance and demand at the pricing which is required to capitalize the systems and make them profitable.

Finally, there is the matter of distribution of services and equipment. The proposals would necessarily act to turn a vital SMR industry with its many entrepreneurs and independent operators into little more than resellers. Stripped of the opportunity to grow and prosper, analog SMR operators would gravitate into the lesser role of reseller, subjected to the onerous contracts that are foisted upon them by the licensee/operators. Such an evolution backwards, from vital competitor to indentured contractor does not add vitality to the telecommunications marketplace. Instead, acceptance of the proposals will merely provide larger, publicly traded entities with the increased and unwarranted leverage necessary to force capitulation on traditional operators, whose only "crime" is success in a healthy, competitive environment.

That such capitulation is a natural result is obvious. If the agency allows large ESMR operators to first, force frequency migration; second, confine growth both geographically and technically of local operators; third, dilute the value of existing systems via foisting a combination of 450 MHz and 800 MHz spectrum, undermining consumer confidence in those systems, etc.; fourth, leverage their position via auction; then finally, employ all of these

advantages while further enjoying liberal construction and loading deadlines, there can be no doubt that the environment for abuse is well established. And as the Commission may note, history amply demonstrates that such market power is a corrupting influence which results in anti-competitive results.

As is fully discussed above, this all too real scenario is not only possible, but highly probable if the Commission accepts the proposals. Only mischief can be expected from large, publicly traded ESMR operators following their natural instinct toward market domination at the expense of others.

Pursuant to this mischief and the havoc it will visit upon the industry, the Commission may see that despite this obvious harm in the name of false progress, the public will not be served. The public's interest is in reliable, cost-efficient, dispatch service. As noted herein, this interest cannot and will not be served by grant of these proposals. In sum, the public will be left wanting due to having an arbitrarily expensive service foisted upon it for which no true demand exists or is likely to exist. For these reasons, the Commission should summarily reject the proposals.

A Truly Beneficial Proposal

Regardless of whether the Commission adopts its proposal for MTA licensing — but most especially if it does — the Commission needs to provide adequate protection for co-channel stations in northern California. Some of the currently authorized wide-area SMR systems use

nothing but digital emission. Experience has shown the Commission that digital emissions require a greater degree of co-channel interference protection than analog voice emissions, and the Commission has taken appropriate action in light of that experience. In this proceeding, the Commission needs to take additional action to prevent the increase of harmful interference between co-channel stations.

Twenty years ago, when adopting the initial rules for the channels above 800 MHz, the Commission stated that

> we wish to be clear that it is our intention to review and study continually all aspects of our assignment plan. In this regard, we fully recognize that the subject concept is new. It is in part untried and untested. Most likely changes and modifications will have to be made; and we will be alert to adjust our policies, standards, and criteria to what the public interest requires. This will be done on our own motion; and, in addition, we would expect, and we request, significant input from the land mobile industry and from land mobile users and those representing them.

Second Report and Order in Docket No. 18262, 46 FCC 2d 752, 781-82 (1974). Later in Docket 18262, the Commission explained that "we will revisit all of the system parameters as we gain knowledge from actual operating experience; and adjustments will be made as it becomes possible to do so," Memorandum Opinion and Order, 51 FCC 2d at 945, 978-79 (1975). Since that time, in a series of measured steps, the Commission has amended its Rules to provide adequate protection for co-channel stations in light of the experience gained.

When the Commission adopted its initial Rules for the 800 MHz band, it recognized that trunked systems at four high peaks in the Los Angeles area required additional co-channel protection. Accordingly, for trunked systems located at Mt. Wilson, Mt. Lukens, Santiago

Peak, and Sierra Peak, the Commission provided co-channel protection for a distance of 105 miles, rather than the more general 70 miles, *see,* 47 C.F.R. §90.621(b)(1).[4] Recognizing that a Motorola site named Modjeska Peak was on the limb of Santiago Peak, the Commission has also provided *de facto* 105-mile protection to trunked systems located at Modjeska Peak.

Based on its experience with high sites in the Los Angeles area, the Commission next moved to provide better co-channel protection between stations in northern California by adopting Rule Section 90.621, which includes a table of certain prohibited co-channel sites. Report and Order in PR Docket No. 82-593, _____ FCC 2d _____ (1984). The table provides, for example, if there is an existing station at Mount Diablo, the Commission will not authorize any station proposed to be located at Loma Prieta.

Next, the Commission applied its experience from California and in provided 105 mile protection for SMR trunked systems at 19 mountaintop sites in the Seattle area. That amendment to Section 90.621(b) of the Commission's Rules provided the Seattle area public with serviceable SMR trunked systems, which would probably have been lost were it not for the Commission's attention to the Seattle situation.

After some years of experience with trunking systems actually in service, the Commission recognized that the digital control signal of the Motorola brand trunking system required a

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[4] Under former Subpart M of the Commission's Part 90 Rules, the exceptional protection for the Los Angeles area peaks had been codified at Rule Section 90.365.

desired-to-undesired signal ratio of somewhere between 14 and 17 dB. Authorities differed somewhat on the precise degree of protection required and the Commission took a conservative approach. Accordingly, the Commission revised its protection criteria from a ratio of 40 dBμ to 30 dBμ to the new standard of 40 dBμ to 22 dBμ, thereby providing a ratio of 18 dB between desired and undesired signals. *See*, Report and Order in PR Docket No. 93-60, _____ FCC Rcd. _____ (1993).

Concurrent with its decision to provide a higher ratio of co-channel protection, the Commission took yet another step, providing more adequate protection to co-channel Conventional systems in the Los Angeles area. The Commission provided 105 mile protection for Conventional stations which had exclusive use of their channels at the four above-named Los Angeles area mountain peaks, thereby helping to preserve those channels for use by more spectrum efficient trunked systems. *Id.* at n. 39.

Experience has also shown that more remains to be done. The 105-mile protection initially provided to trunked stations at four specific sites was not sufficient to prevent the coordination and authorization of unsatisfactory combinations of stations at sites in the Los Angeles area. For example, although they are 73 miles apart, Santiago Peak and Oat Mountain view essentially all of the same area of the Los Angeles Basin. Unfortunately, prior to the establishment of the 40/22 dBμ protection standard, frequency coordinators recommended and the Commission granted a number of co-channel stations at the two sites. The consequence has